

SENATE, No. 1107

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED JANUARY 31, 2022

Sponsored by:
Senator EDWARD DURR
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Bans abortion procedures 12 weeks or more after fertilization.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning abortion, supplementing Title 2A of the New
2 Jersey Statutes, and repealing sections 1 and 2 of P.L.2021,
3 c.375.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in this act:

9 “Abortion” means the use or prescription of any instrument,
10 medicine, drug, or any other substance or device to intentionally kill
11 the unborn child of a woman known to be pregnant or to
12 intentionally terminate the pregnancy of a woman known to be
13 pregnant, with an intention other than: after viability, to produce a
14 live birth and preserve the life and health of the child born alive; or
15 to remove a dead unborn child.

16 “Attempt an abortion” means conduct taken by a person that the
17 person believes will constitute a substantial step in a course of
18 conduct planned to culminate in performing an abortion.

19 “Counseling” means counseling provided by a counselor licensed
20 by the State, or a victim’s rights advocate provided by a law
21 enforcement agency.

22 “Facility” means any medical or counseling group, center, or
23 clinic and includes the entire legal entity, including any entity that
24 controls, is controlled by, or is under common control with such
25 facility.

26 “Fertilization” means the fusion of human spermatozoon with a
27 human ovum.

28 “Medical treatment” means treatment provided at a hospital
29 licensed by the State or operated under authority of a federal
30 agency, at a medical clinic licensed by the State or operated under
31 authority of a federal agency, or from a personal physician licensed
32 by the State.

33 “Minor” means an individual who has not attained the age of 18
34 years.

35 “Perform an abortion” means to take an action that includes
36 inducing an abortion through a medical or chemical intervention,
37 including writing a prescription for a drug or device intended to
38 result in an abortion.

39 “Physician” means a person who is licensed to practice medicine
40 and surgery pursuant to chapter 9 of Title 45 of the Revised
41 Statutes.

42 “Post-fertilization age” means the age of unborn child as
43 calculated from the fusion of a human spermatozoon with a human
44 ovum.

45 “Probable post-fertilization age of the unborn child” means the
46 time period that will, with reasonable medical judgment and
47 reasonable probability, be the post-fertilization age of the unborn
48 child at the time the abortion is planned to be performed or induced.

1 “Reasonable medical judgment” means a professional judgment
2 made by a reasonably prudent physician in the practice of medicine,
3 and made with knowledge about the case and the treatment
4 possibilities with respect to the medical conditions involved.

5 “Unborn child” means an individual organism of species homo
6 sapiens, beginning at fertilization, until the point of being born
7 alive.

8
9 2. a. (1) Notwithstanding the provisions of any other law to
10 the contrary, it shall be unlawful for a person to perform an abortion
11 or attempt to do so, unless the person is a physician, performing or
12 attempting to perform the abortion pursuant to this act, who has first
13 made a determination of the probable post-fertilization age of the
14 unborn child or has reasonably relied upon a determination of the
15 probable post-fertilization age of the unborn child made by another
16 physician. In making a determination pursuant to this paragraph,
17 the physician shall make inquiries of the pregnant woman and shall
18 perform or cause to be performed any medical examinations or tests
19 that a reasonably prudent physician, knowledgeable about the case
20 and the medical conditions involved, would consider necessary to
21 make an accurate determination of post-fertilization age.

22 (2) Except as provided in subsection b. of this section, an
23 abortion shall not be performed or attempted if the probable post-
24 fertilization age of the unborn child, as determined pursuant to
25 paragraph (1) of this subsection, is 12 weeks or greater.

26 b. The provisions of subsection a. of this section shall not
27 apply if:

28 (1) in reasonable medical judgment, the abortion is necessary to
29 save the life of a pregnant woman whose life is endangered by a
30 physical disorder, physical illness, or physical injury, including a
31 life-endangering physical condition caused by, or arising from, the
32 pregnancy itself, but not including a psychological or emotional
33 condition;

34 (2) the pregnancy is the result of rape, if the rape has been
35 reported to a law enforcement agency at any time prior to the
36 abortion and, at least 48 hours prior to the abortion, the patient has
37 obtained counseling for the rape, provided that the counseling may
38 not be provided by a facility that performs abortions unless that
39 facility is a hospital; or the patient has obtained medical treatment
40 for the rape or an injury related to the rape. The physician who
41 performs or attempts to perform an abortion under an exception
42 provided by this paragraph shall comply with applicable State laws
43 that are in effect regarding reporting requirements in cases of rape;
44 or

45 (3) the pregnancy is the result of rape or incest against a minor,
46 if the rape or incest has been reported at any time prior to the
47 abortion to a law enforcement agency or to the Division of Child
48 Protection and Permanency in the Department of Children and

1 Families. The physician who performs or attempts to perform an
2 abortion under an exception provided by this paragraph shall
3 comply with applicable State laws that are in effect regarding
4 reporting requirements in cases of rape or incest.

5 c. Notwithstanding the requirements for performing or
6 attempting to perform an abortion pursuant to this act, a physician
7 terminating or attempting to terminate a pregnancy pursuant to
8 subsection b. of this section may do so only in a manner which, in
9 reasonable medical judgment, provides the best opportunity for the
10 unborn child to survive, unless in reasonable medical judgment
11 termination of the pregnancy in that manner would pose a greater
12 risk of:

13 (1) the death of the pregnant woman; or

14 (2) the substantial and irreversible physical impairment of a
15 major bodily function, not including a psychological or emotional
16 condition of the pregnant woman.

17 d. A person who performs or attempts to perform an abortion in
18 violation of subsection a. of this section shall be guilty of a crime of
19 the third degree.

20 e. A woman upon whom an abortion is performed shall be
21 immune from civil or criminal liability for a violation of, or a
22 conspiracy to violate, subsection a. of this section.

23 f. If, in reasonable medical judgment, the unborn child has the
24 potential to survive outside the womb, the physician who performs
25 or attempts an abortion under an exception provided by subsection
26 b. of this section shall ensure a second physician trained in neonatal
27 resuscitation is present and prepared to provide care to the child
28 consistent with the requirements of subsection g. of this section.

29 g. When a physician performs or attempts an abortion in
30 accordance with this section, and the child is born alive, as defined
31 in the federal “Born-Alive Infants Protection Act of 2002” (Pub. L.
32 107–207, 1 U.S.C. s.8), the following shall apply:

33 (1) Any health care practitioner present at the time shall
34 humanely exercise the same degree of professional skill, care, and
35 diligence to preserve the life and health of the child as a reasonably
36 diligent and conscientious health care practitioner would render to a
37 child born alive at the same gestational age in the course of a
38 natural birth.

39 (2) Following the care required to be rendered under paragraph
40 (1) of this subsection, the child born alive shall be immediately
41 transported and admitted to a hospital.

42 (3) A health care practitioner or any employee of a hospital,
43 physician’s office, or abortion clinic who has knowledge of a
44 failure to comply with the requirements of this paragraph shall
45 immediately report the failure to an appropriate State or federal law
46 enforcement agency, or to both.

47 h. A physician who performs or attempts to perform an
48 abortion under an exception set forth in paragraph (2) of subsection

1 b. of this section shall, prior to the abortion, place in the patient
2 medical file, documentation from a hospital licensed by the State or
3 operated under the authority of a federal agency, a medical clinic
4 licensed by the State or operated under the authority of a federal
5 agency, a personal physician licensed by the State, a counselor
6 licensed by the State, or a victim's rights advocate provided by a
7 law enforcement agency, which documentation shall show that the
8 adult woman seeking the abortion obtained medical treatment or
9 counseling for the rape or an injury related to the rape.

10 i. A physician who performs or attempts to perform an
11 abortion under an exception set forth in paragraph (3) of subsection
12 b. of this section shall, prior to the abortion, place in the patient
13 medical file documentation from the Division of Child Protection
14 and Permanency in the Department of Children and Families
15 showing that the rape or incest was reported prior to the abortion;
16 or, as an alternative, documentation from a law enforcement agency
17 showing that the rape or incest was reported prior to the abortion.

18 j. The physician who intends to perform or attempt to perform
19 an abortion under the provisions of subsection b. of this section
20 shall not perform any part of the abortion procedure without first
21 obtaining a signed informed consent authorization form in
22 accordance with this subsection. The informed consent
23 authorization form shall be signed in person by the woman seeking
24 the abortion, as well as by the physician who is performing or
25 attempting to perform the abortion, and a witness. The physician
26 performing or attempting to perform the abortion shall retain the
27 signed informed consent form in the patient's medical file, and shall
28 maintain the form in compliance with all State and federal laws,
29 including the federal "Health Insurance Portability and
30 Accountability Act of 1996," Pub.L.104-191, and related
31 regulations. The informed consent authorization form shall be
32 presented in person by the physician and shall consist of:

33 (1) a statement by the physician indicating the probable post-
34 fertilization age of the unborn child;

35 (2) a statement that State law allows abortion after 12 weeks
36 fetal age only if the mother's life is endangered by a physical
37 disorder, physical illness, or physical injury, when the pregnancy
38 was the result of rape, or when the pregnancy was the result of an
39 act of incest against a minor;

40 (3) a statement that the abortion shall be performed by the
41 method most likely to allow the child to be born alive, unless this
42 would cause significant risk to the mother;

43 (4) a statement that, in any case in which an abortion procedure
44 results in a child born alive, State law requires that child to be given
45 every form of medical assistance that is provided to children
46 spontaneously born prematurely, including transportation and
47 admission to a hospital;

1 (5) a statement that these requirements are binding upon the
2 physician and all other medical personnel, who are subject to
3 criminal and civil penalties for violations of this act, and that a
4 woman on whom an abortion has been performed may take civil
5 action if these requirements are not followed; and

6 (6) affirmation that each signer has filled out the informed
7 consent form to the best of the signer's knowledge and understands
8 the information contained in the form.

9 k. Any physician who performs or attempts an abortion
10 pursuant to subsection b. of this section shall annually submit a
11 summary of all such abortions to the National Center for Health
12 Statistics no later than 60 days after the end of the calendar year in
13 which the abortion was performed or attempted, subject to the
14 following conditions:

15 (1) The summary shall include the number of abortions
16 performed or attempted on an unborn child who had a post-
17 fertilization age of 12 weeks or more and specify the following for
18 each abortion:

- 19 (a) the probable post-fertilization age of the unborn child;
- 20 (b) the method used to carry out the abortion;
- 21 (c) the location where the abortion was conducted;
- 22 (d) the exception under subsection b. of this section pursuant to
23 which the abortion was conducted; and
- 24 (e) any incident of live birth resulting from the abortion.

25 (2) A summary required under this subsection shall not contain
26 any information identifying the woman whose pregnancy was
27 terminated, and shall be submitted consistent with the federal
28 "Health Insurance Portability and Accountability Act of 1996,"
29 Pub.L.104-191, and related regulations.

30

31 3. Sections 1 and 2 of P.L.2021, c.375 (C.10:7-1 and C.10:7-2)
32 are repealed.

33

34 4. This act shall take effect on the first day of the third month
35 next following the date of enactment.

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37

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STATEMENT

39

40 This bill provides that an abortion is not to be performed or
41 attempted if the probable post-fertilization age of the unborn child
42 is 12 weeks or greater, with certain exceptions noted below. Only
43 physicians will be permitted to perform abortions, and, before
44 performing or attempting to perform an abortion, the physician will
45 be required to make a determination of the probable post-
46 fertilization age of the unborn child or reasonably rely on a
47 determination of post-fertilization age made by another physician.
48 In making the determination, the physician is to make inquiries of

1 the pregnant woman and perform any medical examinations or tests
2 necessary to accurately determine post-fertilization age.

3 The bill provides an exception to the general restriction on
4 abortion procedures after 12 weeks of post-fertilization age if: 1)
5 the abortion is necessary to save the life of a pregnant woman
6 whose life is endangered by a physical disorder, illness, or injury,
7 including a life-endangering physical condition caused by, or
8 arising from, the pregnancy itself; 2) the pregnancy is the result of
9 rape, if reported to a law enforcement agency prior to the abortion;
10 or 3) the pregnancy is the result of rape or incest against a minor, if
11 reported to a law enforcement agency or to the Division of Child
12 Protection and Permanency (DCPP) in the Department of Children
13 and Families or to a law enforcement agency prior to the abortion.
14 In terminating or attempting to terminate a pregnancy under these
15 circumstances, the physician may do so only in a manner which, in
16 reasonable medical judgment, provides the best opportunity for the
17 unborn child to survive, unless the termination of the pregnancy in
18 that manner would pose a greater risk of the pregnant woman's
19 death or greater risk of substantial and irreversible physical
20 impairment of a major bodily function.

21 The bill also: outlines the procedures that a physician who
22 performs or attempts an abortion must follow, consistent with the
23 federal "Born Alive Infant Protection Act," if an exception provided
24 in the bill exists and the unborn child survives the abortion or
25 attempted abortion; outlines the documentation the physician is
26 required to file proving a pregnant woman or minor seeking an
27 abortion has been raped or is a victim of incest; requires the woman
28 seeking the abortion, the physician performing or attempting to
29 perform the abortion, and a witness to sign an informed consent
30 authorization form; and requires any physician who performs or
31 attempts an abortion pursuant to the bill to annually submit a
32 summary of all such abortions to the National Center for Health
33 Statistics.

34 A person who performs or attempts to perform an abortion in
35 violation of the requirements of the bill will be guilty of a crime of
36 the third degree, which is punishable by imprisonment for three to
37 five years, a fine of up to \$15,000, or both. However, a woman
38 upon whom an abortion is to be performed will be immune from
39 civil or criminal liability.

40 The bill repeals sections 1 and 2 of P.L.2021, c.375, which set
41 forth provisions of law that would contradict the provisions of the
42 bill.